
 **Polzer, Stephen (Vol. 01) - 11/19/2003**

1 CLIP (RUNNING 03:07:25.233)

 **JURY TRIAL - DAY 7 SEPTEMBER 21, 2006****POLZER1****82 SEGMENTS (RUNNING 03:07:25.233)****1. PAGE 9:06 TO 9:11 (RUNNING 00:00:12.900)**

06 Q. What is your position at Mack Trucks, sir?
 07 A. I am the director of commercial
 08 administration.
 09 Q. And how long have you worked at Mack
 10 Trucks?
 11 A. Twenty-five years three months.

2. PAGE 10:24 TO 11:06 (RUNNING 00:00:23.000)

24 Q. To whom do you report?
 00011:01 A. Kevin Flaherty. Senior vice president of
 02 sales.
 03 Q. Are you in a particular department or
 04 group at Mack?
 05 A. I am part of the sales organization. We
 06 have a little department, commercial administration.

3. PAGE 11:07 TO 12:04 (RUNNING 00:01:05.000)

07 Q. Are you an accountant, sir?
 08 A. I passed the test.
 09 Q. Which test?
 10 A. Am I -- CPA test. Am I practicing? I do
 11 not really use it. But I did take the test and yes,
 12 I passed it.
 13 Q. And when was that?
 14 A. I'm going to say it was around 1984, '85.
 15 Q. And where did you go to college?
 16 A. Bloomsburg University.
 17 Q. And what is your degree in?
 18 A. BS in accounting.
 19 Q. Do you have any postgraduate degrees?
 20 A. Yes, I do have a -- I did do -- finance.
 21 I can't even think of what -- from Villanova
 22 University, Master's Degree in finance from
 23 Villanova University.
 24 Q. Anything else?
 00012:01 A. No, that is it.
 02 Q. When did you get your Master's at
 03 Villanova?
 04 A. I completed that, I believe, in 1998.

4. PAGE 13:16 TO 16:07 (RUNNING 00:03:33.000)

16 Q. Are you responsible or is your department
 17 responsible, sir, for list pricing and net pricing
 18 on sales to Mack?
 19 A. Yes.
 20 Q. And are you also responsible for list
 21 pricing and net pricing on sales to Mack dealers?
 22 A. Yes. But I -- can I clarify just a little
 23 bit?
 24 Q. Sure.
 00014:01 A. There are limits as to what I in my

02 particular role can approve or not approve. I can
 03 approve to a certain level and then we do need the
 04 approval -- once it gets over a certain level we do
 05 need the head of finance and Kevin Flaherty to agree
 06 or not to agree to try and quote different deals.

07 Q. What are the limits of what you and your
 08 department can approve?

09 A. Currently -- and this probably just came
 10 into place starting this -- I mean, more formalized
 11 this year is, I believe you are aware that the
 12 district manager has a certain amount of sales
 13 assistance percentage that they can issue. It then
 14 goes to the regional vice president. They have
 15 another limit that they amy do without my knowledge
 16 or without me ever seeing -- seeing the deal. And
 17 then if it -- if they are recommended something
 18 beyond their limit, they will send it to me and I
 19 have the ability to approve without any other
 20 further review any deal that I feel will -- that
 21 where the brand's gross profit will be zero or
 22 better.

23 Anything beyond zero, I need to
 24 prepare -- anything where we are proposing that we
 00015:01 may take actually a financial gross margin loss on a
 02 deal, we will -- our group will prepare a financial
 03 analysis of that deal, and we will forward that to
 04 Stand Janis or Kevin Flaherty, who will make the
 05 determination if we can proceed or if we need to
 06 adjust it, amend, it or whatever.

07 Q. And you said that's been formalized within
 08 the last year?

09 A. Correct.

10 Q. What was the limits, if any, on your
 11 authority prior to the last year?

12 A. I would say I -- I would say I had the --
 13 or I was approving deals that may have been at a
 14 loss without having to go through their approval.
 15 But on the very big deals where I knew that it was
 16 going to be a judgment call, I needed more judgment
 17 than myself to make that determination, in that we
 18 had that process in place.

19 Q. But there were no set guidelines? It was
 20 just something you determined based on your own
 21 judgment that was something you should seek -- go
 22 higher up on?

23 A. I would say there were informal
 24 guidelines.

00016:01 Q. Tell me what those informal guidelines
 02 were?

03 A. I would say that if at the end of the day
 04 there was a deal taken and there is visibility to
 05 the profit and loss in that deal, and it was more
 06 than somebody at a level higher than me did not
 07 like, I would -- I would be questioned on it.

5. PAGE 22:13 TO 22:19 (RUNNING 00:00:20.000)

13 Because I am not an accountant. On the -- you said
 14 that the sales to the dealers are treated as
 15 wholesale transactions; is that correct?

16 A. Correct.

17 Q. Are the sales to national accounts treated

18 as retail transactions?
19 A. That is correct.

6. PAGE 24:22 TO 25:08 (RUNNING 00:00:39.000)

22 Q. And that allocation is handled by people
23 on the finance end; is that right?
24 A. We have -- since Volvo has owned this we
00025:01 changed a little bit of the reporting structure. It
02 is my understanding that there is a -- the
03 manufacturing division has its own accounting staff
04 that would determine those calculations.
05 Q. And prior to Volvo, who made that
06 determination?
07 A. I believe the plant accounting reported to
08 the finance department.

7. PAGE 26:11 TO 28:16 (RUNNING 00:02:36.500)

11 Q. Okay. Now, let's talk about sales
12 assistance. And let's focus for now on the sales
13 assistance granted to dealers?
14 A. Excuse me. Can you repeat that?
15 Q. Sales assistance granted to dealers?
16 A. Okay.
17 Q. We're on the dealer side and then we'll
18 move hopefully at some point in this deposition to
19 the other side, the national accounts side. But I
20 want to focus on dealers.
21 A. Okay.
22 Q. You said that -- you described your
23 authority. And you said that the district manager's
24 and the regional vice presidents have authority?
00027:01 A. Correct.
02 Q. Now, as I understand it, the -- in
03 addition to the 35 percent discount there is
04 standard sales assistance of 12 percent; is that
05 right?
06 A. That's correct.
07 Q. Okay. You are smiling?
08 A. I'm smiling because I am guessing you have
09 gotten an education into this more than you probably
10 care to have had.
11 Q. It's a shame I will never have a need to
12 buy a truck. Because I think I understand a little
13 bit more than probably a lot of people.
14 A. Probably more than our DMs.
15 Q. So we have 35 percent which is an across
16 the board discount?
17 A. That is actually in the dealer agreement,
18 so we are contractually obligated to grant that to a
19 dealer.
20 Q. And then there is standard sales
21 assistance which is 12 percent, right?
22 A. Correct.
23 Q. Now, is that standard sales assistance
24 available to a dealer on any deal?
00028:01 A. Yes, it is.
02 Q. Now, in addition -- do you call that
03 standard sales assistance or RSA? Or what do you
04 call it? Let me ask it that way?
05 A. I would say it can go by three names,
06 standard assistance, RSA, and our DMs will recognize

07 it as FD. Factory discount.
08 Q. FD?
09 A. Yes.
10 Q. Okay. Now, for how long has that standard
11 sales assistance been 12 percent?
12 A. With the introduction of the O3B price
13 book.
14 Q. And prior to the O3B price book, what was
15 the standard sales assistance?
16 A. It varied by model.

8. PAGE 29:12 TO 30:22 (RUNNING 00:01:40.000)

12 Q. Okay. Now, in addition to standard sales
13 assistance there is additional assistance available,
14 correct?
15 A. Correct.
16 Q. And the district managers have authority
17 to grant additional sales assistance, correct?
18 A. Correct.
19 Q. And what do you call that additional sales
20 assistance?
21 A. The most common term is ESA.
22 Q. Extra sales assistance?
23 A. Exactly. Yes.
24 Q. Are there any other names used for it or
00030:01 initials?
02 A. Additional sales assistance, I sometimes
03 because trying to uncomplicate the fact that our
04 current list pricing structure means we need three
05 levels, I will call it the negotiable sales
06 assistance.
07 Q. Okay.
08 A. But I just probably refer to that myself
09 as that. That's how I try to explain it when
10 somebody does ask.
11 Q. Now the district managers, what is their
12 authority with respect to this additional sales
13 assistance?
14 A. Currently it is 2.5 percent, which would
15 be above the 35 and above the 12.
16 Q. And the regional vice president, is it
17 5 percent?
18 A. Currently it's 5 percent.
19 Q. Five percent on top of the two and a half?
20 A. No, no, no. 5 percent -- I'm sorry. Two
21 and a half more on top of the two and a half.
22 5 percent on top of the 35 and the 12.

9. PAGE 36:22 TO 37:11 (RUNNING 00:00:46.000)

22 Q. Was one of the reasons you came up with
23 this new sales system because regional vice
24 presidents had authorized deals that you did not, at
00037:01 levels that did you not approve of?
02 A. No.
03 Q. It was just a matter of the -- your list
04 price being out of line with the market?
05 A. I would say that was definitely the
06 overriding consideration.
07 Q. Now, the --
08 A. Excuse me. And the ease of administration
09 of getting everything on one playing field would

10 make it a lot easier for the salesmen to quote
11 trucks.

10. PAGE 37:12 TO 39:24 (RUNNING 00:03:04.000)

12 Q. Mr. Polzer, let me just -- before I ask
13 you about this document let me follow-up with you on
14 one thing that we were just talking about.

15 You've testified that in your
16 view Mack's list price was out of line with the
17 market?

18 MR. HEEP: Objection to form.

19 - - -

20 BY MR. MACK:

21 Q. You can answer.

22 A. It was out of line. Yes. I mean, market
23 is considered the other trucking manufacturers, yes.

24 Q. Okay. By that, do you mean Mack's list
00038:01 prices were higher than its competitors?

02 A. Yes.

03 Q. And why did you consider that difference
04 between list prices to be out of line?

05 A. I guess maybe it was a personal preference
06 that we were list pricing trucks of \$200,000 of list
07 price when we knew that the on-the-street price to
08 sell that truck needed to be -- I am throwing a
09 number out -- to be 70 or \$75,000 and it became --
10 it just didn't make sense to me.

11 Q. Was it because the list prices were out of
12 line with the market, was it basically the case that
13 sales assistance was being requested on every deal?

14 A. That was an end product of where our list
15 prices were. But I would not say that that was a
16 determining factor.

17 Q. Okay. That was certainly a consequence?

18 MR. HEEP: Objection to form.

19 THE WITNESS: If I believe I
20 understand your question, yes. It was
21 more deals being routed to my machine
22 given our current -- that would be a
23 correct statement.

24 - - -

00039:01 BY MR. MACK:

02 Q. And by being routed to your machine, you
03 mean you were getting faced with situations where
04 dealers were requesting more and more sales
05 assistance?

06 MR. HEEP: Objection to form.

07 THE WITNESS: No, I would not
08 agree to that statement.

09 - - -

10 BY MR. MACK:

11 Q. You were seeing an increasing number of
12 request for sales assistance?

13 MR. HEEP: Objection to form.

14 THE WITNESS: I would say, I
15 don't know that the total number of sales
16 assistance requests was changing. We were
17 selling so many deals. But possibly the
18 percentage of those sales assistance
19 requests that would now acquire my
20 approval level would be have been higher.

21 That is what I would be agreeing to.
22 - - -
23 BY MR. MACK:
24 Q. Okay. Fair enough.

11. PAGE 40:10 TO 40:12 (RUNNING 00:00:06.000)

10 Q. No consideration at all of sales
11 assistance, as you understand it, is given when Mack
12 prepares its budget?

12. PAGE 41:04 TO 42:01 (RUNNING 00:01:09.000)

04 BY MR. MACK:
05 Q. You can answer.
06 MR. HEEP: You can answer as
07 long as you are not guessing.
08 THE WITNESS: I am not guessing?
09 Our budgets are determined based off of a
10 projected expected sales plus minus cost
11 of sales or a gross margin.
12 Sales assistance just happens to
13 be the process that is in place that
14 arrives at the sale -- the selling price
15 component of the sale in the cost and sale
16 equation. So there is no specific dollar
17 amount or significance, in my opinion, of
18 the sales assistance dollar. Each deal is
19 on its own and as trucks sell. I mean --
20 I am sorry.
21 - - -
22 BY MR. MACK:
23 Q. Well, the budget is based on the net net
24 price?
00042:01 A. Correct.

13. PAGE 42:22 TO 44:01 (RUNNING 00:01:29.000)

22 Q. Sure. What do you mean by net net
23 pricing?
24 A. In my frame of reference, I feel I need to
00043:01 explain. There is net pricing and then there is net
02 net pricing.
03 To me, net pricing would be
04 invoicing the truck with that negotiable extra sales
05 assistance amount that has been approved and firmed
06 up, and we could get into that process if you want.
07 That the dealer accepts our, you know, our whatever
08 we have said is the approved sales assistance, and
09 invoicing the sales assistance at the time of
10 invoice. That would arrive you to a net price of
11 the truck.
12 Net net pricing would be the
13 request we get from various dealers to please
14 include the volume bonus, the 2 percent that we
15 would normally withhold, please deduct my invoice up
16 front for that. That to me is net net pricing. And
17 yes, that is the price that determines our
18 accounting sales price and invoice sales price.
19 Q. Now the 2 percent is called a volume
20 bonus. But the dealer gets that 2 percent on any
21 volume of trucks he sells?
22 A. That's correct. That is correct.
23 Q. He is not -- it's not tied to selling a

24 minimum level of trucks, correct?
00044:01 A. That is correct.

14. PAGE 54:24 TO 55:14 (RUNNING 00:00:41.600)

24 Q. Do you recognize Exhibit-2, sir?
00055:01 A. Yes, I do.
02 Q. Is this a memo that you sent to the dealer
03 principals?
04 A. Yes.
05 Q. By principals that would be the owner of
06 the dealership or the distributorship?
07 A. The memo was actually sent by our
08 marketing department which is the communication
09 program. I can't speak for them, who they address
10 all of these to. Was it meant for the dealer
11 principals at a minimum? Yes, it was.
12 Q. And this memo is dated July 28, 2000,
13 correct?
14 A. Correct.

15. PAGE 57:05 TO 62:04 (RUNNING 00:06:24.200)

05 Q. Now, there -- when we go down to the
06 different models besides each model are listed two
07 numbers?
08 A. Correct.
09 Q. And on the CH model I see 5-plus
10 10 percent?
11 A. Correct.
12 Q. Does this mean that any dealer selling a
13 CH would receive a 15 percent discount?
14 A. At a minimum, yes, that's what it says.
15 Q. And why did you break the numbers out 5
16 plus 10 percent?
17 A. The left-hand side represents what the
18 standard discount was known to the dealers for that
19 particular price book they were dealing with.
20 The right-hand side numbers was
21 a recognition that the minimum price of a truck
22 should be something lower, one, to lower the
23 dealer's floor plan cost and the -- I will stop
24 there.
00058:01 Q. So on a CH you would get 35 plus 15,
02 correct?
03 A. Correct.
04 Q. And if we do a similar exercise we could
05 come up with a number for each of the other models
06 listed there, right?
07 A. Correct.
08 Q. And in all events the dealer was to
09 receive the discounts listed on this Polzer-2?
10 A. Correct.
11 Q. Now, how long did this billing structure
12 remain in place?
13 A. Until we got to a price book where we just
14 combined both of those numbers and made them the
15 standard discount.
16 Q. And that is when it became 12 percent?
17 A. No. That is -- this would still be under
18 the old system. This is when we had a system where
19 a CH was 15. Under the old system an RD was 14.
20 And as you can see, an MR/LE was 12 and a half.

21 Q. Does this memo say anything about extra
22 sales assistance or additional sales assistance?

23 A. The memo does not say that.

24 Q. Okay.

00059:01 A. But there is an understanding that you
02 could still apply for extra sales assistance beyond
03 that.

04 Q. This was not an attempt by you to do away
05 with the additional sales assistance program?

06 A. It may have been an attempt to reduce the
07 need for the number of sales assistance requests
08 that we would see.

09 Q. You say at the last paragraph, we're
10 confident you will appreciate the added benefits to
11 this one net-price system. What did you mean by one
12 net-price there?

13 A. I believe what I -- shall I know what I
14 meant by that was this was a point in time where
15 absolutely every single deal was going to have to
16 have a request for extra sales assistance.

17 There was a recognition that the
18 five -- the left-hand side numbers, the five, the
19 four and a half, which was at that time what was the
20 given invoice-able discount to the dealer was just
21 way to high. And at that time we recognized every
22 deal would require additional sales assistance. And
23 the amounts of additional sales assistance requested
24 were creeping up into the numbers you saw on the
00060:01 right-hand side there.

02 So what we thought we were doing
03 was, for instance, maybe in certain instances we
04 thought we were setting the minimum price on certain
05 truck sales that a dealer should not have to come
06 back for additional sales assistance.

07 Q. What instances, sir?

08 A. Excuse me?

09 Q. What models?

10 A. Excuse me?

11 Q. What models did you believe you were
12 setting the minimum price?

13 A. I believe all of them.

14 Q. So it was your hope that these discounts
15 would do away with the need for dealers to come back
16 for additional sales assistance?

17 MR. HEEP: Objection to form.

18 Go ahead.

19 THE WITNESS: In certain
20 instances. I mean, we knew that was not
21 going to stop the request. The dealers
22 are entitled to apply on every single
23 truck.

24 - - -

00061:01 BY MR. MACK:

02 Q. Why is that?

03 A. I believe that it is just a system that is
04 unique to Mack from any other OEM. We do allow a
05 dealer to request sales assistance on every single
06 truck that they have in inventory or that they want
07 to order.

08 Q. Now, have you ever participated in any
09 discussions at Mack regarding whether Mack should
10 switch to the system used by the other OEMs?

11 MR. HEEP: Objection. Vague.

12 THE WITNESS: What system?

13 - - -

14 BY MR. MACK:

15 Q. You said the system Mack had was unique.

16 In what respect is it unique?

17 A. It was my understanding that in other OEMs
18 when you ordered trucks you got them at a price --
19 and I have no specific knowledge as to how they
20 arrive at it -- but this is your price. Don't come
21 back to us for any additional price unless it's
22 truly an extenuating circumstance, is my
23 understanding of how the other OEMs work.

24 Mack I believe was unique in
00062:01 that we would allow a dealer to at least request on
02 every single truck.

03 Q. Right.

04 A. That was the unique system.

16. PAGE 71:14 TO 74:07 (RUNNING 00:03:25.400)

14 Q. This is another one of those sale
15 assistance forms, correct?

16 A. Correct.

17 Q. Now, the date where you entered your
18 comments is April 14th, 2003?

19 A. Correct.

20 Q. And this is for distributor -- sales
21 assistance request for distributor F273; is that
22 right?

23 A. Correct.

24 Q. Do you know what distributor that is?

00072:01 A. That is Dallas Mack. I do recognize that
02 code.

03 Q. All right. And in Dallas Mack -- the
04 district manager here requested equalization to
05 factory pricing, right?

06 A. Correct.

07 Q. And do you know what -- this was for
08 McNeilus; is that right?

09 A. Actually I remember this. Yes. That is
10 correct.

11 Q. Dallas Mack was attempting to quote
12 McNeilus?

13 A. Yes.

14 Q. And they were attempting to quote them on
15 50 stock boost-a-load chassis and also looking at 50
16 DM mixer chassis?

17 A. That's what it says.

18 Q. What's a stock boost-a-load chassis?

19 A. I was hoping you were not going to ask
20 that. I am not a truck spec guy.

21 Q. You don't know what that model is?

22 A. I would be guessing.

23 Q. And the request came in to equalize
24 factory pricing. Did you understand that to be a
00073:01 request by the dealer to be given the same pricing
02 that Mack gave to McNeilus?

03 A. That is what I understood the request to
04 be.

05 Q. And how did you respond to that request?

06 A. I said McNeilus is a recognized national

07 account to be counted by S100.

08 Q. And why did you write that, sir?

09 A. It was my opinion they were a designated
10 national account.

11 Q. And as a result, the dealer did not
12 receive the S100 pricing, right?

13 A. In fact, I believe this request is
14 probably denied, sent back to him.

15 Q. Because only McNeilus was entitled to that
16 first S100 pricing, right?

17 A. No. I would disagree with that statement.
18 I would agree to the statement that we were not --
19 national accounts was the only entity that could
20 sell to McNeilus.

21 Q. And what do you base that on?

22 A. Just my understanding is that -- or my
23 belief that Mack was entitled to sell directly to
24 certain accounts and it was -- I'm going on my own
00074:01 personal conviction -- it was Mack's -- conviction
02 is too strong of a word -- belief that a dealer
03 could not sell to that. We were the seller of
04 trucks to that account.

05 Q. That was your understanding as of
06 April 14th, 2003, correct?

07 A. Correct.

17. PAGE 79:10 TO 81:03 (RUNNING 00:01:51.000)

10 Q. You said that the dealers perceived that
11 there was competition, right?

12 MR. HEEP: Objection. He didn't
13 say that.

14 MR. MACK: Yes, he did. But go
15 ahead.

16 - - -

17 BY MR. MACK:

18 Q. Did the dealers perceive competition?

19 A. If you -- if you read the comments we get
20 on the sales assistance requests, I would -- I would
21 have to take the opinion they perceive that there is
22 competition.

23 Q. Competition with McNeilus, right?

24 A. Correct.

00080:01 Q. And the -- has your policy -- strike that.
02 Has your understanding with respect to dealers
03 receiving S100 pricing when quoting against McNeilus
04 changed since April 14th, 2003?

05 MR. HEEP: I'm sorry. Can you
06 read it back. I sort of missed it.

07 - - -

08 BY MR. MACK:

09 Q. Has your understanding, sir, regarding the
10 issue you addressed here in your comment in
11 Exhibit-4 changed since April 14th of 2003?

12 MR. HEEP: Objection. Vague.

13 THE WITNESS: As I understand
14 the question, no, it has not.

15 - - -

16 BY MR. MACK:

17 Q. And if a dealer requested today, November
18 the 19th, put in a request to be equalized to
19 factory pricing for a sale to McNeilus, would that

20 dealer receive S100 pricing?
 21 MR. HEEP: Objection to form.
 22 THE WITNESS: A sale to
 23 McNeilus, correct?
 24 - - -

00081:01 BY MR. MACK:

02 Q. Yes, sir.
 03 A. I would say the answer would be the same.

18. PAGE 86:17 TO 90:17 (RUNNING 00:05:43.900)

17 Q. Sure. Is S100 pricing available to a
 18 dealer who puts in a sales assistance request and
 19 indicates on that request that he is competing
 20 against McNeilus?

21 A. What is the purpose -- what -- can you
 22 expand on who he is designated a customer? Is he
 23 designating a customer or he is looking for a stock?

24 Q. Well, let's deal first with a situation
 00087:01 where he designates a customer and says my
 02 competition for this customer is McNeilus. I want
 03 the same pricing that McNeilus gets. Would he get
 04 it?

05 A. It is my position that -- or how we are
 06 dealing with the sale assistance is that while there
 07 is a perception they feel they are competing, I do
 08 not have that same perception. I do not feel it is
 09 direct competition, so they probably will not get --
 10 have not got -- it depends on a lot of other
 11 factors. That is only one factor used in a sales
 12 assistance determination.

13 Q. If that is all the person says, I am
 14 competing against McNeilus, give me the same pricing
 15 that you give McNeilus, will you give that pricing
 16 to the to the dealer?

17 A. It will depend on the other factors
 18 involved in that situation.

19 Q. What are the other factors?

20 A. Quantity of trucks involved.

21 Q. Okay.

22 A. The fleet size of the customer. Very
 23 possibly, potentially the geographic region of the
 24 customer. It is just one of a lot of factors.

00088:01 Q. Are any of those factors put in writing
 02 anywhere?

03 A. No, they are not.

04 Q. Have you ever -- to your knowledge, has
 05 anyone at Mack ever told the dealers you can receive
 06 the same pricing as McNeilus if you meet the
 07 following terms?

08 A. I'm not aware of that.

09 Q. Are you aware, sir, in any instances in
 10 which a dealer has received the same pricing as Mack
 11 gives McNeilus on a deal in which he indicates is
 12 competition with McNeilus?

13 A. I believe -- I mean, I am going to say --
 14 I want Jeremy to listen. I believe it needs a
 15 clarification what we mean by equalizing now?

16 Q. Let's start first with same pricing?

17 A. Are you talking about -- when you talk
 18 equalization are you asking for a sales assistance
 19 percentage or are you looking for a net net price?

20 Q. The old net net price?
 21 A. Have there been instances? I would have
 22 to say that there when taking in some of these other
 23 factors that there probably have been some instances
 24 that were unique to that particular situation that
 00089:01 warranted it, that.
 02 Q. Can you give me any specific deals where a
 03 dealer was given the same net net pricing as
 04 McNeilus?
 05 A. The one I can remember was up in Pacific
 06 Northwest for our Seattle Mack. The customer was
 07 Miles Sand & Gravel.
 08 Q. Any others that you can remember?
 09 A. I am sure there were. Just not offhand.
 10 Q. How many truck on Miles Sand & Gravel?
 11 A. I believe it was for four.
 12 Q. Four trucks?
 13 A. Correct.
 14 Q. And what dealer is that?
 15 A. Excuse me?
 16 Q. What dealer?
 17 A. Dealer? Seattle Mack.
 18 Q. And the dealer complained to Mack, did he
 19 not, that he was competing against McNeilus and
 20 McNeilus was beating him on price?
 21 MR. HEEP: Objection to the form
 22 of the question.
 23 THE WITNESS: I did get an email
 24 from the district manager related to that,
 00090:01 yes.
 02 - - -
 03 BY MR. MACK:
 04 Q. Who made the decision to give the dealer
 05 the same net net pricing as McNeilus?
 06 A. If I remember, it was very close, very
 07 close.
 08 Q. Who made the decision?
 09 A. Oh. I did. It would have been approved
 10 by me.
 11 Q. Did you talk to anyone else about it?
 12 A. No, I did not.
 13 Q. Now, did you give the dealer the same
 14 payment terms as McNeilus?
 15 A. That would not have come up.
 16 Q. McNeilus pays on how many days?
 17 A. Their terms are 120 days. Are we getting

19. PAGE 91:06 TO 91:10 (RUNNING 00:00:08.700)

06 Q. Did you give those pricing terms to the
 07 dealer?
 08 A. No, we did not.
 09 Q. Or payment terms?
 10 A. No, we did not.

20. PAGE 93:10 TO 94:06 (RUNNING 00:00:57.000)

10 Q. Okay. Do you know, sir, why you turned
 11 down this request for sales assistance?
 12 A. I don't know who it is. I do not know
 13 who the customer is.
 14 Q. But at least according to your comments,
 15 you weren't prepared to equalize with S100 pricing

16 in this instance if the truck was purchased through
17 the dealer?

18 MR. HEEP: Objection. Asked and
19 answered.

20 - - -

21 BY MR. MACK:

22 Q. You can answer.

23 A. Judging by the time frame if it was the
24 same customer as what we discussed three or four
00094:01 exhibits ago, that would have been the reason.

02 Q. No, sir. You can look at Exhibit-3. It's
03 a different dealer.

04 A. Do you know what? It does not mean it was
05 not the same customer. It still could have been the
06 same customer.

21. PAGE 94:18 TO 95:12 (RUNNING 00:01:16.000)

18 Q. As we sit here today, can you tell me any
19 customers, national account customers of Mack where
20 you do not have that understanding?

21 A. Repeat the understanding.

22 Q. The understanding that they will only
23 receive \$100 pricing if they purchase through Mack?

24 A. I feel that question is misleading. I am
00095:01 not aware of another situation with this particular
02 customer. But I am also not aware that we wouldn't
03 be asking questions if somebody wanted to sell to an
04 established national account before we considered
05 giving sales assistance or not.

06 Q. Why would you ask those questions, sir?
07 Why wouldn't you just process it like another sales
08 assistance request?

09 A. Because it is a national account, and
10 there is a perception on my part that I should ask a
11 question if in fact somebody else can try and sell
12 to that account.

22. PAGE 96:11 TO 98:08 (RUNNING 00:02:43.000)

11 Q. Is it your opinion, sir that Mack is not
12 obligated to equalize a dealer sales assistance
13 request with a national account Body Builder
14 discount?

15 A. Yes, that is my opinion.

16 Q. And have you had that opinion throughout
17 your entire -- the entire period of time that you
18 have been in the commercial administration
19 department?

20 A. Yes.

21 Q. And have you based your decisions
22 regarding the granting of sales assistance to
23 dealers requesting national account Body Builder
24 discounts on that opinion?

00097:01 A. That has been one of the factors that goes
02 in -- that goes into -- it's one of the factors in
03 making a final approval to termination.

04 Q. Can you think of any situation, sir, other
05 than this situation you've told us about in Seattle
06 where you have equalized a dealer sales assistance
07 request with a national account Body Builder
08 discount?

09 A. I cannot think of a specific. I am

10 probably sure that there have been instances where
 11 the other factors warranted doing something like
 12 that or equalizing to whatever that level is.

13 Q. Isn't it fair to say, Mr. Polzer, that in
 14 most instances you have denied those requests for
 15 equalization where a dealer is requesting the same
 16 sales assistance as the national account Body
 17 Builder discount?

18 MR. HEEP: Objection to form.

19 THE WITNESS: I would say I did
 20 not deny an amount. I did not deny in the
 21 sense that I did not return any approval
 22 of the negotiable sales assistance.

23 I would say, in most cases I
 24 approved an amount less than the net net
 00098:01 price sales assistance discount. And,
 02 again, clarifying we're dealing with when
 03 you talk about McNeilus as a national
 04 account, the sales assistance discount is
 05 that the dealer perceives it may be is not
 06 the same as what it actually -- as to a
 07 what a dealer equivalent discount would
 08 be.

23. PAGE 98:11 TO 99:20 (RUNNING 00:01:57.000)

11 Q. The percentages would be different, is
 12 that what you are saying?

13 A. I am telling you that the percentages that
 14 Joe Favia thinks he uses for McNeilus is not
 15 equivalent to what I would have to give a dealer to
 16 be -- to theoretically equalize a dealer.

17 Q. Well, I am confused now. Because you said
 18 before the percent a dealer thinks he gets. And
 19 then you lapsed into talking about Joe Favia. What
 20 does one have to do with the other?

21 A. I just --

22 Q. Mr. Favia is not a dealer?

23 A. Mr. Favia also gave a deposition. I am
 24 aware of that. And I am sure -- well.

00099:01 Q. Have you reviewed --

02 A. All I am saying --

03 Q. Have you reviewed his testimony, sir?

04 A. No, I have not. What I am saying is when
 05 Mr. Favia submits a sales assistance request and he
 06 asks for a certain percentage, that percentage is
 07 not, in my opinion, the percentage that I would have
 08 to give a dealer in a theoretical situation where I
 09 was equalizing, is what I am trying to say.

10 Q. And why is there a difference?

11 A. Because the way we invoice McNeilus.
 12 McNeilus, we negotiate the final price, the net net
 13 price, and the equivalent of is the final retail
 14 price. And there are -- there are sums of money
 15 that they do not -- are not aware of that are added
 16 beyond the sales assistance request that Joe Favia
 17 would submit that go into the final price that, in
 18 my opinion, if we need to equalize the dealer to
 19 that final price that equalized discount would be
 20 lower than what Joe Favia would be approved for him.

24. PAGE 100:07 TO 102:02 (RUNNING 00:02:06.000)

07 Q. All right. My question to you is whether
08 you have authority to approve net net pricing for a
09 dealer?

10 A. I have the authority in those cases where
11 the gross profit will be zero or better, when I've
12 done the mathematical calculation at what the sales
13 assistance will be to get to the net net price you
14 are asking about, to approve that, if it falls in
15 the parameters that I'm allowed to approve.

16 Q. Now, when I -- net net billing is the
17 exception rather than the rule, right?

18 A. Yes.

19 Q. I think there is -- I saw one memo from
20 you that said that it's -- that analyzed in what
21 percentage of the cases does Mack grant net net
22 billing? Do you recall doing that analysis?

23 A. I don't know that I did an official
24 analysis. It was a, you know, above in the air cast
00101:01 as to how many invoices dealers were requested to
02 have there volume bonus credited to them at the time
03 of invoice, which is the net net part.

04 Q. And then didn't you determine that in
05 70 percent of the cases dealers did not do that?

06 MR. HEPP: Objection to form and
07 foundation.

08 - - -

09 BY MR. MACK:

10 Q. You can answer.

11 A. It could be around there. Yes. It's more
12 do not than do.

13 Q. And did you determine what percentage of
14 the cases does Mack agree to that?

15 MR. HEPP: Objection. Vague.

16 - - -

17 BY MR. MACK:

18 Q. Agree to net net billing?

19 A. I can't give you an exact number. But
20 like I said, it was a general assumption just
21 judging by the request for net net billing across my
22 desk.

23 Q. Net net billing is advantageous to the
24 dealer, correct?

00102:01 A. From a cash flow perspective, yes, it
02 would be.

25. PAGE 102:08 TO 105:24 (RUNNING 00:05:20.200)

08 Q. Is Polzer Exhibit-7 an email that you sent
09 to Mr. Lusty in March of this year?

10 A. Yes, I recognize it.

11 Q. And this related to a sales assistance
12 request by Mr. Ralich who was asking for the same
13 discount and same terms given to Body Builders,
14 right?

15 A. Correct.

16 Q. And you, sir, did not equalize Mr. Ralich
17 with the Body Builders, did you?

18 A. That is correct.

19 Q. And in the email that you wrote to Mr.
20 Lusty, you said it's my opinion that we are not
21 obligated to equalize a dealer sales assistance

22 request with a national account Body Builder
 23 discount, right?

24 A. Correct.

00103:01 Q. And then you said, if it is another dealer
 02 Body Builder, i.e, Kimble, RDK, Schwing, Putzmeister
 03 involved, yes. But not the national account Body
 04 Builder. And you said McNeilus, Heil, and McClain?

05 A. Correct.

06 Q. Now, do I understand that to mean that if
 07 a dealer is requesting equalization with the pricing
 08 given by Mack on a transaction involving Kimble,
 09 RDK, Schwing, or Putzmeister, that dealer should be
 10 equalized?

11 MR. HEEP: Objection. Vague and
 12 compound.

13 THE WITNESS: Yes. I believe
 14 what I was intending to write there that
 15 if a dealer was submitting a sales
 16 assistance to sell directly to Kimble,
 17 RDK, Schwing, or Putzmeister, we were
 18 obligated to equalize to those discounts
 19 that had been given to the current dealers
 20 who were selling to that account. That is
 21 what I meant by that statement.

22 - - -

23 BY MR. MACK:

24 Q. And then you -- in the next sentence you
 00104:01 talked about the quantity issue; is that right?

02 A. Correct.

03 Q. And then you said, I believe that is why
 04 we used to come up with Body Builder programs to try
 05 and get the dealers close to the McNeilus discount.
 06 What are you referring to there by the Body Builder
 07 programs?

08 A. When I first took over, which would have
 09 been August of 1998 in the current capacity, we did
 10 have a program that was available to all dealers
 11 where we guaranteed -- guarantee -- where we said if
 12 you met certain criteria you would have this
 13 additional discount.

14 And the intent of the program,
 15 and I believe the key word is to get close, to the
 16 McNeilus discounting that was in effect, at that
 17 particular point in time.

18 Q. Why is close the key word?

19 A. I believe close is the key word because I
 20 don't believe -- because it is part of my
 21 understanding we never had to -- we -- a little too
 22 strong. Never say never. We did not have to
 23 equalize.

24 Q. You were not -- you didn't have to
 00105:01 equalize, but you were trying to get the dealers
 02 close to the McNeilus discount?

03 A. That was the intent of the program back
 04 then.

05 Q. Now, this talks -- you talked about the
 06 McNeilus discount, not the McNeilus net net price
 07 here, right?

08 A. I would have -- in my opinion they are the
 09 same. If I say discount, it is the dealer equalized
 10 discount that gets to the net net price.

11 Q. And the McNeilus net net price was

12 better -- strike that.

13 The Body Builder programs got
14 the dealer close to the McNeilus net net price but
15 they didn't fully equalize the dealers with the
16 McNeilus in the net price?

17 A. I would say that is -- I am sorry. That
18 is a fair assumption.

19 Q. And we have been sort of talking about
20 this. But the McNeilus net net price is then --
21 would then be lower than the price the dealers were
22 getting under the Body Builder program than the net
23 net price to the dealer?

24 A. I believe that is correct.

26. PAGE 106:01 TO 106:03 (RUNNING 00:00:19.300)

00106:01 Q. And if the -- does McNeilus get the best
02 net net price on the models that it purchases of any
03 Mack customer purchasing those models?

27. PAGE 106:18 TO 107:06 (RUNNING 00:00:36.600)

18 A. Actually, the answer probably would be no.

19 Q. Okay. Who has a better net net price than
20 McNeilus? Ryder?

21 A. Totally different market.

22 Q. They don't buy the same models?

23 A. No.

24 Q. What market is McNeilus is?

00107:01 A. Vocational. Refuse predominantly, mixer.
02 I am sorry. Mixer pretty much too. But from Mack
03 they buy predominantly more refuse product vehicles
04 than they do mixer type vehicles.

05 Q. Who gets a cheaper price than McNeilus as
06 a national account?

28. PAGE 107:12 TO 107:12 (RUNNING 00:00:01.000)

12 Q. Waste Management?

29. PAGE 107:19 TO 108:01 (RUNNING 00:00:11.600)

19 THE WITNESS: Okay. I would say
20 it is Waste Management and there are a
21 couple large municipalities.

22 - - -

23 BY MR. MACK:

24 Q. Like New York City?

00108:01 A. Yes.

30. PAGE 108:02 TO 108:13 (RUNNING 00:00:29.900)

02 Q. Now, in the last line of your email here
03 you said, obviously we will find out in the near
04 future if this is a valid pricing division, as this
05 is one of main contentions of the Toledo Mac
06 lawsuit.

07 That is a reference to the
08 lawsuit that we're here, today about, right?

09 A. Correct.

10 Q. And what when you said this is one of the
11 main contentions, what were you referring to?

12 A. Obviously it was a poor attempt at trying
13 to play lawyer.

31. PAGE 109:10 TO 110:18 (RUNNING 00:01:46.200)

10 Q. Now, have you, sir, ever received any
11 training or instruction at Mack regarding the
12 Robinson Patman laws and how they may or may impact
13 on the pricing decisions you made?

14 A. No, I did not.

15 Q. Have you ever received any training at
16 Mack regarding the and antitrust laws in general?

17 A. I would have to answer probably not.

18 Q. Have you ever received any training at
19 Mack regarding the applicability of any laws to the
20 pricing decisions that you make?

21 A. I'm sorry. Can you repeat that?

22 Q. Have you ever received any training at
23 Mack regarding -- I am going to switch the question
24 on you -- the applicability on any state dealer laws
00110:01 on the pricing decisions that you make?

02 MR. HEEP: When you say training
03 in all these questions it is like a formal
04 training program?

05 MR. MACK: Formal or informal.

06 MR. HEEP: Or would it also
07 include whether he has gotten any advice
08 from his counsel's office?

09 MR. MACK: Sure. We will do
10 them both. Not in connection with this
11 lawsuit?

12 MR. HEEP: Outside of the
13 lawsuit.

14 THE WITNESS: I would have to
15 answer formal training, no. But as
16 certain programs were developed, they were
17 at times run up the legal flag pole,
18 so-to-speak.

32. PAGE 116:07 TO 125:04 (RUNNING 00:11:03.500)

07 Now, in your email Exhibit-7 you
08 talk about the reason -- you say the reasoning is
09 how do you rationalize a one truck order discount
10 who uses the magic word McNeilus to a given 400
11 quantity customer like McNeilus. What did you mean
12 by that?

13 A. It means that over -- over the course of
14 five years I have probably looked at well over ten
15 thousand sales assistance requests. And what I have
16 found is that dealers are not truthful on many of
17 them.

18 As an example, they
19 intentionally, and we have documented proof of that,
20 low-ball what they say the customer's selling price
21 is to try and get us to make a sales assistance
22 decision that we'll give them more discount than
23 they probably truly need to effect that truck sale.
24 That obviously hurts Mack's profitability. It
00117:01 probably helps the dealers.

02 It is my opinion that -- and I
03 believe this was the case with Toledo Mac -- every
04 single request for a vocational truck said use the
05 word I'm up against McNeilus, I'm up against Heil, I
06 am up against McClain, it is my opinion that could
07 not possibly be the case every single time. So that

08 is why it is one of the factors that I will look at
 09 and try and make a rationalized decision that it --
 10 are they really, really competing or are they not?

11 And dealers who -- and
 12 dealers -- they are smart. They sometimes know if
 13 they use concern buzz words they are going to try to
 14 get us to make a decision that we otherwise may not
 15 have to make.

16 Q. Did you ever look at a situation and say,
 17 do you know what, the dealer is not lying to me
 18 here?

19 A. I would say that Mile Sand & Gravel,
 20 definitely based on the correspondence I received,
 21 that that was probably a legitimate type of a
 22 situation.

23 Q. Okay. One out of ten thousand?

24 A. Do I believe -- again, we're now talking
 00118:01 about a dealer perceiving that he is in direct
 02 competition with McNeilus. I -- I don't subscribe
 03 to that theory that there is that.

04 Q. Well, was it in this situation in Seattle,
 05 was the dealer competing against McNeilus?

06 A. In that case, the district manager did
 07 some follow-up work and you have seen the email
 08 where he verified that that was the case.

09 Q. Is that the only situation you are aware
 10 of, sir, in your entire history at the company where
 11 you concluded or someone else working with you
 12 concluded that there was actually competition
 13 between the dealer and McNeilus?

14 A. No.

15 Q. There is other situations, you just can't
 16 identify them?

17 A. Yes. I cannot remember anything specific,
 18 but I do know that the DM or RVP will at some time
 19 because if I -- I mean, if we get to the approval
 20 process, there is a process for maintenance or
 21 reconsideration of the sales assistance request.

22 And there have been times, and I
 23 know there have been times in that instance where I
 24 have given back a sales assistance that didn't --
 00119:01 maybe did not equalize to the net net. But it was
 02 asked to be reconsidered and the DM or RVP would
 03 make a clarifying comment as to that factor.

04 Q. When is the last time you sold a truck,
 05 sir?

06 MR. HEEP: Objection. Vague.

07 - - -

08 BY MR. MACK:

09 Q. If at all?

10 MR. HEEP: The last time that he
 11 approved --

12 MR. MACK: Personally.

13 MR. HEEP: That he personally
 14 sold a truck?

15 MR. MACK: Yes.

16 MR. HEEP: Okay.

17 THE WITNESS: I had never sold a
 18 truck.

19 - - -

20 BY MR. MACK:

21 Q. When was the last time you worked in a

22 dealership?
23 A. As an employee or as a representative of,
24 say, an internal audit department that went to a
00120:01 dealership and --
02 Q. I will take either one, sir?
03 A. Actually that would be 1996. Because our
04 Mack Canada corporate offices were in the same
05 building as Toronto branch.
06 Q. How about in an audit capacity?
07 A. '87.
08 Q. Wouldn't a dealer, sir, who was out in the
09 field earning his living every day by selling trucks
10 have a better idea than you regarding who he was
11 competing with?
12 MR. HEEP: Objection to form and
13 foundation.
14 THE WITNESS: Probably.
15 - - -
16 BY MR. MACK:
17 Q. And you certainly have heard, haven't you
18 Mr. Polzer, that the dealers very much perceive that
19 McNeilus, McClain, and Heil are competing against
20 them?
21 MR. HEEP: Vague. Is the
22 question that all dealers perceive that?
23 MR. MACK: No. The dealers.
24 The large number of dealers perceive that?
00121:01 THE WITNESS: Definitely certain
02 number of dealers perceive that.
03 - - -
04 BY MR. MACK:
05 Q. And you've received sales assistance
06 requests over the years that say Heil, McClain,
07 McNeilus are competing against me?
08 A. Correct.
09 Q. Many sales assistance requests that say
10 that?
11 A. Absolutely.
12 Q. And, in fact, when you wrote this email to
13 Mr. Lusty, you said it's almost become a magic word,
14 in your view, right?
15 A. Correct.
16 Q. I guess you wouldn't have used magic word
17 if it wasn't a word that was used a lot, right?
18 A. Yes.
19 MR. HEEP: Objection to form.
20 THE WITNESS: Absolutely.
21 - - -
22 BY MR. MACK:
23 Q. And have you ever, sir, investigated
24 whether any of those times that Mr. Yeager put in a
00122:01 sales assistance request that said I'm competing
02 against McNeilus, McClain, and Heil, have you ever
03 investigated whether or not he was telling the
04 truth?
05 A. No, I did not.
06 Q. You just assumed he wasn't because he did
07 it so often?
08 MR. HEEP: Objection to form.
09 - - -
10 BY MR. MACK:
11 Q. Is that correct?

12 A. I am not going to say I made that
 13 assumption. I would say that term McNeilus,
 14 whatever you want to call it, the perceived
 15 competition of McNeilus is one of the factors that
 16 will go into the decision on the sales assistance.

17 Q. But when Mr. Yeager is saying it in his
 18 request, did he assume he was telling the truth?

19 A. I believe I said earlier when every single
 20 one said that there came a point in time where I had
 21 a doubt.

22 Q. Did you consider, sir, the possibility
 23 that Mr. Yeager was targeting specifically the
 24 vocational business more so perhaps than other
 00123:01 dealers?

02 A. I would have then relied on the district
 03 manager and the regional vice president to give me
 04 that -- some other feedback.

05 Q. Well, you did talk to Mr. Lusty, didn't
 06 you?

07 A. I don't talk to Mr. Lusty, one of the DMs
 08 that does not call that often.

09 Q. Did you talk to Mr. Lusty about whether
 10 Mr. Yeager was experiencing competition from
 11 McNeilus, McClain, and Heil?

12 A. I believe in some of the conversations
 13 with Jack -- as Jack was looking, you know, for
 14 things to happen in his district, I'm sure he
 15 brought that up. I can't recall a specific
 16 conversation.

17 Q. Fair. Did he ever tell you, sir, Mr.
 18 Yeager is putting in sales assistance requests that
 19 are not true, he is not competing against McNeilus,
 20 McClain, and Heil on these deals?

21 A. I do not recall that he ever contradicted
 22 one way or the other. If anything, he may have
 23 supported. I don't recall specific.

24 Q. On those instances where Mr. Yeager put in
 00124:01 sales assistance request indicated he was competing
 02 against McNeilus, McClain, or Heil, did you equalize
 03 Mr. Yeager with the net net pricing given to
 04 McNeilus?

05 MR. HEEP: The question pertains
 06 to all? Has he ever equalized or has he
 07 equalized all of them?

08 MR. MACK: All of them.

09 MR. HEEP: Have you equalized
 10 all of Mr. Yeager's sales assistance
 11 request in the situations where he said
 12 the competition is McClain not McNeilus?

13 MR. MACK: Yes, sir.

14 THE WITNESS: My recollection is
 15 probably not.

16 - - -

17 BY MR. MACK:

18 Q. Can you, sir, identify for me one instance
 19 in which you have equalized Toledo Mac with the net
 20 net pricing given to McNeilus, McClain, or Heil?

21 A. No, I cannot. If you are asking for
 22 specific recollection, no, I cannot.

23 Q. Do you have, sir, any recollection at all
 24 of ever having given Mr. Yeager and Toledo Mac
 00125:01 net -- the same net pricing that McNeilus, McClain